

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM C. DUFFELMEYER,

Plaintiffs,

X
Index No. 07CV11352 (KMK)

-against-

STEPHEN MALFITANO, individually, JOSEPH
CANNELLA, individually, TOWN/VILLAGE
BOARD OF THE TOWN OF HARRISON,
New York, BOARD OF POLICE
COMMISSIONERS OF THE TOWN/VILLAGE
OF HARRISON, New York and the
TOWN/VILLAGE OF HARRISON, New York,
Defendant(s).

**DECLARATION OF
STEVEN JAY HARFENIST**

X

Steven Jay Harfenist, an attorney admitted to practice in the courts of the United States District Court for the Southern District of New York, declares the following, under the penalties of perjury

1. I am a partner in Friedman, Harfenist, Langer & Kraut (FHLK), attorneys for the Defendants in the above captioned matter. I submit this Declaration in response to the Court's Order, requiring me to show cause why I should not be ordered to pay the reasonable fees and expenses incurred by Plaintiff's counsel in attending the conference March 19, 2008.

2. Simply put, the reason we failed to appear at the pre-motion conference scheduled for March 19, 2008 is that we did not receive the ECF notification of the conference. Both I and my associate Neil Torczyner, Esq. are

registered as attorneys to receive notification for this matter in the ECF system.

Neither of us received notification.

3. The Court should be advised that it is not as if we ignored the status of the pre-motion conference. After our request had been pending for approximately one (1) month we contacted the Court's Deputy Clerk to determine the status of our application. We were advised that the Court had not reached the application at that time but would be doing so shortly. Accordingly, I was on the "look out" for an ECF notification as to our request.

4. While it is understood that attorneys' registered on ECF are presumed to receive notification, it is difficult to disprove a negative, especially when only the clerk's ECF unit has access to information showing whether the "bounce" was even sent. Additionally, it is understood that counsel of record is under an obligation to regularly monitor the docket sheet in open cases, something usually done by me, but did not happen in this instance. Since March 6, 2008, the day the Court's Endorsed Order was entered on the Docket Sheet, my father has been seriously ill. Since that time, the past eighteen (18) days, he has been hospitalized in the ICU unit with acute pancreatitis, a life threatening condition with a more than fifty (50%) percent fatality rate. Only last night was he moved from the Intensive Care Unit to a "Step Down" unit. Over this period I have been in the office approximately four (4) hours and I have relied on the ECF notification

system.

5. In light of the foregoing it is respectfully requested that I not be ordered to pay reasonable fees and expenses incurred by plaintiff's counsel for attending the conference on March 19, 2008.

Dated: Lake Success, New York
March 24, 2008

S
Steven Jay Harfenist (SJH-6930)

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COMMISSIONERS OF THE TOWN/VILLAGE
OF HARRISON, New York and the
TOWN/VILLAGE OF HARRISON, New York,
Defendant(s).

**DECLARATION OF
NEIL TORCZYNER**

X

Neil Torczyner, an attorney admitted to practice in the courts of the United States District Court for the Southern District of New York, declares the following, under the penalties of perjury

1. I am an associate with the firm of Friedman, Harfenist, Langer & Kraut (FHLK), attorneys for the Defendants in the above captioned matter. I submit this Declaration in support of the Defendants' response to the Court's Order, requiring Steven Jay Harfenist to show cause why he should not be ordered to pay the reasonable fees and expenses incurred by Plaintiff's counsel in attending the conference March 19, 2008.

2. In an effort to avoid potentially missing electronic case filings ("ECFs") that are emailed by the Clerk of the Court for the United States District Court for the

Southern District of New York, FHLK employs a back-up system whereby my email address is listed as a secondary email address for Steven Jay Harfenist.

3. Under the above system, all ECF notices that are emailed to Steven Jay Harfenist are automatically forwarded to the undersigned by the Clerk's ECF email system.

4. Since invoking this process approximately in February 2007, the undersigned has consistently received copies of all ECF notices from the Southern District of New York to Steven Jay Harfenist.

5. I have performed a search of my email folders and hereby certify that at no point did the undersigned receive an ECF notice indicating that a pre-motion conference had been scheduled by the Court for March 19, 2007.

Dated: Lake Success, New York
March 24, 2008

S _____
Neil Torczyner